Yukon Ombudsman

Annual Report 2007

Ombudsman's Message: Building Relationships

It is my honour and privilege to present this 12th Annual Report of the Yukon Ombudsman. I have sent this report to the Honourable Ted Staffen, Speaker of the Yukon Legislative Assembly, who will present it to the assembly as required by the *Ombudsman Act*.

I am also offering this report to the people of the Yukon. This is the first annual report to be completed since I became Ombudsman in May of 2007. We have adopted a new format, in the hope that the report will prove more user friendly and interesting to all Yukoners. The report summarizes our activities throughout the year, as usual, but we have also included other types of general information about our office, which we hope you'll find useful. Our goal is to inform, educate and illustrate the nature of the work we do and the results achieved.

As an individual and as Ombudsman, I believe in the importance of fairness, team work, honesty and integrity. I believe in saying what you mean and resolving conflict with mutual respect, even when you agree to disagree. These are the values that I bring to this office. During my first months in the position, I have worked to build relationships with co-workers, government officials and members of the public, in order to earn their confidence. I began this process by meeting with deputy ministers and many other government officials, working to update our public education materials, and making as many presentations as possible about our office and what we do.

Another priority for me has been to become familiar with the investigations started before my arrival and to develop a process for reducing the time required to complete investigations.

My first eight months were also filled with the search for new office space and the organization of our move. The Office of the Ombudsman can now be found on Hawkins Street in Whitehorse. More details about how to get in touch with us are set out elsewhere in this report.

It is not the role of the Ombudsman to advocate for people who complain about government or to be a defender of the government. The Ombudsman is, quite simply, an advocate for fairness. Our office must act independently and impartially, so that the system of Ombudsman oversight can be effective.

We can't do this on our own. Success in our work requires two things. First, individuals must bring their concerns forward. Second, government must be ready to cooperate, listen and, sometimes, change.

It is important for everyone to know that we have a rigorous screening process for assessment of complaints. Not all complaints warrant an investigation. When we do knock on government doors with questions, it is only with serious matters. Because of that, we expect cooperation, assistance and the recognition that we are not there to interrupt daily operations or to find fault. The Office of the Ombudsman has the same goals as government and the public — improvement of government administration and service to Yukoners.

Even in my short time in this position, it has become evident to me that a common reason for dissatisfaction with government has to do with communication. Sometimes complainants experience poor communication. Sometimes they have been given incorrect information. On occasion, there is no communication at all. In most cases, effective communication can go a long way toward avoiding the types of conflicts and misunderstandings that end up in my office.

We often need to remind government officials that their actions have very real consequences and can affect people's lives significantly. That's why the work of government is so important. That's also why it's essential to have a system of oversight such as the one our office provides.

When I became Ombudsman, I joined a team of extraordinary women who rise to varied and complicated challenges on a daily basis. The staff members of the Office of the Ombudsman are dedicated, experienced and committed to providing effective and accessible services to all Yukoners. I thank each of them for their warm welcome and endless support.

Taking complaints, investigating concerns and resolving conflict is difficult work and requires a balanced and cooperative approach. We do not accomplish this alone. I offer our thanks to individuals and departments that recognize our common goals and help us work toward them.

Throughout 2007, we have provided service to hundreds of Yukoners who asked for information, needed help to resolve a concern or brought a complaint.

Our work requires constant reference to fair process and we try to lead by example — listen carefully, respond clearly, explain decisions and, as my mother always taught, treat people the way you would want to be treated. The work of the Ombudsman is challenging and diverse. Meeting every enquiry with professionalism and excellence is our goal, and I look forward to serving the people of Yukon over the next four years.

T. a. McPhee

Tracy-Anne McPhee

Ombudsman
Information and Privacy Commissioner

Office of the
Yukon Ombudsman &
Information and Privacy
Commissioner

Our Mission

To provide an independent, impartial means by which public complaints concerning the Government of Yukon can be heard and investigated with the goal of promoting fairness, openness and accountability in public administration.

What We Do

The function of the Office of the Ombudsman is to ensure openness and accountability, and to promote fairness, in the provision of Yukon government services.

Every day, the Yukon government makes decisions and provides services that affect people's lives. If you believe that a government decision or process is unfair, you may complain to the Ombudsman. Through an investigation of your complaint, the Ombudsman can independently and impartially look at the matter to identify whether or not you have been treated fairly.

If you have been treated unfairly, the Ombudsman can recommend changes to correct the unfairness. Through our work, we try to educate the public and government about fairness in administration and the role of our office. Our independent review of individual complaints can improve administration of government.

This can result in benefits for the person who brings the complaint forward, as well as others in the same situation, the government and all citizens of the Yukon.

Contact Us

The office of the Yukon Ombudsman is located in Suite 201 at 211 Hawkins Street in Whitehorse.

Call us at 867-667-8468

Outside of Whitehorse, call collect or call toll-free at 1-800-661-0408, extension 8468

Fax us at 867-667-8469

Email us at info@ombudsman.yk.ca

Send a letter to P.O. Box 2703, Whitehorse, YT Y1A 2C6

Go to our website at **www.ombudsman.yk.ca** and click on the Ombudsman link.

Our Team

Tracy-Anne McPhee
Ombudsman
Information and Privacy Commissioner

Catherine Buckler Lyon
Senior Investigator/Mediator

Susan Dennehy
Investigator/Mediator
Legal Counsel

Alice Purser
Administrative Assistant

L–R: Catherine, Susan, Alice, Tracy

What is the Yukon Ombudsman?

The Yukon Ombudsman is an impartial investigator who takes complaints of unfairness in territorial government services. The Ombudsman is an officer of the Legislative Assembly but is independent of government and political parties. The Ombudsman is neither an advocate for a complainant, nor a defender of government actions.

What We Can Investigate

The Ombudsman can investigate:

- Yukon government departments
- crown corporations & independent authorities or boards
- public schools
- Yukon College
- hospitals
- professional & occupational governing bodies
- municipalities & Yukon First Nations (at their request only)

The Ombudsman cannot investigate:

- disputes between individuals
- the federal government
- the courts, Yukon Legislature, Yukon Elections Office, or lawyers acting on behalf of government
- the RCMP
- landlord/tenant matters
- home or auto insurance
- banks
- businesses
- matters which took place before the *Ombudsman Act* became law (1996)

Can the Ombudsman Help You?

The Office of the Ombudsman is generally an office of last resort. This means that you should first try to resolve your problem by using the complaint and appeal procedures offered by the government body you are dealing with. Many complaints can be resolved quickly by first approaching the government organization involved and using its internal complaint mechanisms. If you are not certain what complaint procedures are available, you can speak to the organization directly or the Ombudsman can assist you by providing referral information on how to address your problem.

Remember to:

- Get the names and titles of the people you have dealt with;
- Keep track of the dates of your contact with the organization; and
- Keep all papers and letters relating to your complaint.

Not all complaints get investigated. Each complaint is unique and we try to assist in finding the best resolution. That might mean an investigation, or other ways to solve your problem may be suggested.

All services of the Office of the Ombudsman are free and confidential.

What Happens When You Ask Us For Help?

When a complaint comes to us, it follows a process that includes determination of jurisdiction, preliminary inquiries and research, analysis, possible investigation and resolution. Here is a brief description of how our process works.

Step 1 — Is this the type of complaint we can take?

We will listen to your complaint and ask questions to determine if our office is the best place to deal with it. The Yukon *Ombudsman Act* sets out the types of complaints that we can take. If the *Act* does not apply to your complaint, we will talk to you about other options.

Step 2 — Is the complaint ready for us?

We will ask what steps you have already taken to resolve your complaint. We will want to know things like:

- Did you ask the government office to give you reasons for the decision?
- Was there an appeal process? If so, did you try it?
- Did you attempt to resolve your matter with the management of the department?

If you have not tried some of these options, we'll ask you to do so, before we take your complaint. The Office of the Ombudsman is a place of last resort. You must first try any internal government processes that are available to resolve your matter, before coming to us.

Step 3 — What information do you have?

We will ask you for all the details about what happened. We may ask you to write down your story and give us copies of any documents you have about your complaint.

Step 4 — How do we deal with the complaint impartially?

We will look at your information and will also ask the government for information so that we can determine how best to deal with your complaint. We will try to resolve your complaint informally.

Step 5 — If your complaint is not resolved, what's next?

If your complaint can't be resolved informally, we may investigate. Sometimes things can be resolved through discussion with the department during the investigation process. After investigation, if your complaint is substantiated, the Ombudsman can make recommendations to the department.

Out and About — Where We've Been in 2007

January

- Staff Training Session, Whitehorse Correctional Centre — Whitehorse, YT

June/July

- Meetings with Yukon Government Deputy Ministers — Whitehorse, YT

September

- Meeting with Deputy Ministers Review Committee — Whitehorse, YT
- United States Ombudsman Association Conference — Anchorage, AK

October

- Journalism 101 Class, Yukon College — Whitehorse, YT

November

- The Specialist Ombudsman: Working Behind Prison Walls — St. John's, NL

December

- Sharpening Your Teeth: Advanced Investigative Training for Watchdogs — Toronto, ON

Community Outreach

The Office of the Ombudsman is a service available to all Yukoners. As with many offices located in Whitehorse, we aren't as well known in other Yukon communities. We are working to change that. For example, we are developing an updated Ombudsman brochure, producing an info card directed at youth and planning community visits which will include public information sessions about our work and services. We hope the format and distribution of this report will also help to introduce our office to communities and corners of the Yukon where we may not be well known.

The Yukon Ombudsman in Action — Reality Check

Often the best way to describe something is to give examples. We've collected seven stories that illustrate the work we've done in 2007 and the results we can achieve. Because our services are confidential, we've changed the names of the individuals involved.

Because I Said So... Isn't Good Enough

Yukon Legal Services Society (YLSS)

Michael applied to the Yukon Legal Services Society for legal aid but was disappointed to receive a letter from the Society's Executive Director denying his request. He didn't give up right away, but instead appealed the decision to the Board of the Society, only to be denied again. There was no explanation given in either case, and Michael was both upset and puzzled. He knew of others, whom he believed to be in similar financial circumstances, who had received legal aid. It didn't seem fair. Michael felt that he at least deserved an explanation.

Michael complained to our office and we investigated. Procedural fairness requires that individuals be given adequate explanations for decisions. We confirmed that no explanation for the denials was given, even though Michael had asked for one. We also became concerned that in addition to Michael's case, explanations were not being given to other applicants as well.

To check this out, we selected a number of YLSS files at random and examined them. We found a serious lack of communication with applicants about why they were denied legal aid. In general, applicants would be provided with a single sentence stating that they didn't meet the financial eligibility. Similarly, upon appeal to the Board, they would generally receive only a statement that the Board had upheld the Executive Director's decision. In our view, these limited responses did not meet what is required by standards of procedural fairness.

We also found a second issue. The Executive Director of the Society has discretion to provide legal aid even when an applicant isn't eligible based on income. Our examination of YLSS files showed that there were no written guidelines for using this discretion. In cases in which the Executive Director had exercised this discretion and provided legal aid, there was no record justifying that decision. It was therefore impossible to determine how such a decision had been made and whether similar cases were being dealt with in the same way.

Outcome: The YLSS decision to deny legal aid to Michael was not changed. However, the case resulted in important changes that benefit all those applying for legal aid. YLSS agreed to develop policy that would provide the Executive Director with guidelines for exercising discretion and that would require records be kept on each file, showing how decisions were made. YLSS also agreed to provide applicants with adequate explanations for decisions to deny legal aid. In addition, YLSS took the initiative to make more information available to applicants. For example, it posted its eligibility criteria, guidelines, application process and appeal process on its website.

The Proof Is In the Paperwork

Health and Social Services (H&SS)

Don is a seasonal worker who came to us with a complaint about the department of Health and Social Services. He had received a letter from Insured Health and Hearing Services (IHHS) in regard to his coverage under Yukon Health Care Insurance. The department was asking him for proof that he lives in the Yukon.

Don explained to us that he had provided the department with a copy of his Yukon driver's licence. However IHHS doesn't accept driver's licences alone as proof of residency and it asked for additional proof. Don didn't think this was right. He refused to provide any additional information that would satisfy IHHS that he was indeed a Yukon resident. As a result, his Yukon Health Care Insurance was cancelled. He complained to us that this was unfair.

In order to be covered by Yukon Health Care Insurance, you must be a resident of the territory. When we looked into the case, we discovered that the department had received a tip that Don was living outside Yukon. That's why it asked Don for proof of his residency. The department also explained to us that it recognizes that some Yukoners, like miners or outfitters, have seasonal work. It was willing to accept proof in several forms, such as employment records, utility or rental documents, grocery and tax receipts, banking and credit card paperwork, or other information that indicates actual presence in Yukon.

Outcome: When we considered the purpose and terms of the health care insurance scheme in Yukon, we concluded that it is reasonable for IHHS to request proof of eligibility in order to make a decision. Because Don was unwilling to provide any additional documentation, his complaint of unfairness could not be substantiated.

If You Make A Promise, Keep It

Health and Social Services (H&SS)

Alisha was going through a very difficult time. She was worried that her daughter was being abused and had asked the department of Health and Social Services (H&SS) to investigate. When the investigation was complete, Alisha still felt uneasy. She wasn't certain that the investigation had been done properly. That's when she came to us. We helped her write a letter to the department's deputy minister, outlining her concerns and asking a number of questions.

The deputy minister wrote back, assuring Alisha that the department would look into it and get back to her within "several weeks". Alisha was understandably very anxious, but she tried to wait patiently for the department's letter. She waited, and waited some more. After eight weeks with no word from the department, she came to our office once again.

We contacted the department to ask why Alisha hadn't received the answers when promised. H&SS told us that the answers were taking longer than expected because the department needed to collect information from a number of sources. But our investigation found that there were a number of internal communication problems, including a failure to communicate clearly to staff what information was needed, why it was required and what the deadline was to complete the work. The result was that the work was not done and no one had contacted Alisha to tell her that she wouldn't be getting the answers at the promised time.

Outcome: H&SS agreed that that this series of events was unacceptable and committed to ensure that the problems behind the delay would be addressed by setting realistic time frames for responses; re-assessing those time frames from time to time to ensure that they can be met; clearly communicating to staff what is required, when and why; and keeping the individual informed about any delay.

In the case of Alisha, she received both an apology and an answer to her letter.

A Few Enquiries Go A Long Way

Whitehorse Correctional Centre (WCC)

James, an inmate of the Whitehorse Correctional Centre, was eagerly looking forward to an upcoming visit from his family, who lived in a distant Yukon community. Visits were a real treat and an important support for James. But when the big day came, James and his family were both in for a disappointment. His family arrived at the jail only to be told that the visit had been cancelled at the last minute. James was told that the reason for the cancellation was that there were not enough staff persons on duty that day to safely supervise the inmates and visitors. But James and his family were still frustrated and unhappy with what had happened. He brought the matter to us.

As usual, before beginning an actual investigation, we made some preliminary enquiries. They revealed that the decision to cancel family visits on the day in question was made when several staff had called in sick. WCC tried to bring in auxiliary staff but this was unsuccessful. As a result, WCC managers came to the conclusion that it would not be possible to provide proper security within the institution as well as supervise family visits.

Outcome: We were satisfied that the cancellation of visits on short notice, while problematic for inmates and families, was unavoidable in this instance. Preliminary enquiries were enough to deal with this case and a full investigation of the complaint was not necessary. James confirmed that his family was able to visit the following day.

When the Rules of the Game Change ... Tell the Players

Public Service Commission (PSC)

Patty had been working for the Yukon government for some time when she became interested in another job within government that was being advertised. She applied but didn't get the job. Of course Patty was disappointed but she also had some concerns about the way the hiring process had been conducted. She believed that the person who did get the job had not applied for the position and didn't have the correct qualifications. She thought this was unfair and brought the issue to us. When we notified the PSC of the details of Patty's complaint, the Commission agreed to look into the matter.

The PSC confirmed that although a competition was held for a vacant position, for which Patty applied, the position was not actually filled. That's because another government employee, who had been on extended leave, returned to work shortly after the competition was held. This employee's return to work was sooner than expected and, for budgetary reasons, it affected the government's plan to fill the vacant position. In the end, the department decided not to fill the vacant position. Instead, some administrative duties attached to the vacant position were assigned to an existing staff person. This gave the appearance that she had been given the job without applying or being qualified, but this was not the case.

Outcome: The PSC acknowledged that better communication with applicants in this type of situation might have avoided the misunderstanding. However, the PSC's actions were not unfair, so Patty's complaint was not substantiated.

Take Care and Be Fair

Energy, Mines and Resources (EMR)

Fred, a Yukon businessman, had 48 used vehicles that he needed to store. A friend allowed him to store them on his property. Then, Fred received some unexpected news. In the middle of December, Lands Branch of EMR contacted Fred to say that he was trespassing. It turned out that he had mistakenly stored his vehicles on Crown land instead of on his friend's property. Fred was going away on holidays. Lands Branch offered to move the vehicles, at its own expense, off the Crown land and onto the correct piece of land. Fred agreed. Lands Branch decided to carry out the move immediately, since the government was entering into a lease agreement on the Crown land.

The following spring, Fred discovered that the vehicles had been left stacked up in a pile, leaking oil and fluids. He complained to Lands Branch that the vehicles were damaged by the move and that he was concerned he might be held liable for potential environmental damage because of the leaking fluids. Fred tried to resolve the issues with the department but was unsatisfied with the result and complained to us.

We began investigating and found that the government can use a formal court process for dealing with trespass. The Lands Branch didn't use that process in Fred's case, but instead, got Fred's verbal permission to move the cars, with no written confirmation of the details.

While it is not necessary for the government to use the court process in every case, any process it does undertake must be fair. When the Branch volunteered to move the vehicles, it should also have assessed its plans to ensure that damage to the vehicles or the environment would be prevented or minimized. Forcibly removing vehicles from the frozen ground and then stacking them on top of one another demonstrated a lack of care for both the environment and the vehicles.

Outcome: The department of Energy Mines and Resources was very cooperative in working to resolve the issues. As a result of this investigation, it developed a comprehensive policy and guide on how to handle the unauthorized occupation of Yukon lands.

My Decisions Rely on Your Decisions

Education

In 2004, Marie-Claire returned to post-secondary school in southern Canada. She'd been away from school for a while and was looking forward to continuing her program. Marie-Claire also had a family to support, so heading back to school was a difficult decision. Could she afford it? When she heard from the department of Education that she would receive a Yukon Grant worth $1564, that was the clincher. She headed back to school.

Then, in 2005, Marie-Claire received a letter from the department of Education containing the news that she should not have received the grant in 2004, and that the money would have to be repaid. This was terrible news for Marie-Claire. The money had already been spent. Re-paying it would create real hardship for her. That's when she came to us.

Our investigation revealed that Marie-Claire had provided the department with all the information it needed to make its decision in 2004. She had kept the department well-informed about her educational status, living arrangements and personal circumstances, and had responded to all department requests for information. She did everything she could to make sure she was eligible, before she took the money and spent it.

We also found that Marie-Claire was indeed ineligible for the grant. The department's first decision to award her the grant was incorrect.

From the department's perspective, it seemed reasonable to simply ask for the money back. But we also considered the issue from Marie-Claire's point of view. Government departments have expertise in the programs they administer and it was reasonable for Marie-Claire to rely on the department's ability to make a correct decision. The onus is on the department to take proper care with its decision-making at the outset, to avoid causing harm to the applicant. Catching the error later simply isn't good enough.

Outcome: The department of Education agreed that it would be unfair to require Marie-Claire to repay the 2004 grant.

Statistics — Ombudsman Services

Every year we are contacted by hundreds of Yukoners. They may be seeking information, asking for help or direction with a concern, or making a complaint. Even though many of the complaints or issues are outside our jurisdiction, we try to help. We often spend time directing citizens to the right place or making enquiries on their behalf to ensure that they are on the right track. This work can take only a few minutes or can keep us busy for several hours. In many cases, people are nearing the end of their patience by the time they get to us, and the last thing they need is to be told yet again that they are in the wrong place.

In 2007, we received 51 complaints. Of those, 35 were within our jurisdiction and 16 were not. We provided information to another 122 people or suggested where they could go for assistance.

Jurisdictional Complaints Handled In 2007

Brought forward from 2006	33
Complaints received in 2007	35
Total	**68**
Complaints resolved in 2007	32
Carried over to 2008	36
Investigations	33
not yet analyzed	3

Resolution Of Jurisdictional Complaints Received In 2007

Opened as investigation	11
Referred to another remedy	5
Further investigation not necessary	3
Insufficient information provided	5
Complaint withdrawn	2
Legislated appeal exists	1
No benefit to complainant	2
Otherwise resolved	3
Not yet analyzed	3
Total	**35**

Ombudsman Investigations Handled In 2007

Brought forward from 2006	33
Opened in 2007	11
Total	**44**
Completed in 2007	11
Carried over to 2008	33

Outcome of Ombudsman Investigations Completed in 2007

Complaint substantiated	8
Complaint not substantiated	2
Complaint discontinued	1
Total	**11**

Non-Jurisdictional Complaints

Businesses	6
Courts	1
Federal	3
Other	3
Other Provinces	2
RCMP	1
Total	**16**

Complaints Received in 2007 — by Authority

Authority	Opened as Investigation	Not Opened as Investigation	Not Analyzed	Total
Community Services	2	1		3
Education	3			3
Energy, Mines & Resources	1	3		4
Health and Social Services	2			2
Highways and Public Works		2		2
Public Service Commission		1	1	2
Whitehorse Correctional Centre	3	12	1	16
Yukon Liquor Corporation	1	1		
Yukon Workers' Compensation Health & Safety Board		1	1	2
Total	**11**	**21**	**3**	**35**

Ombudsman Requests for Information

Total	**122**

2007–2008 Budget Summary

The budget for the operations of the Office of the Ombudsman and the Information and Privacy Commissioner (IPC) is submitted annually to the Members' Services Board for review before being approved by the Legislative Assembly. The budget summary below covers both functions of the office for the period from April 1, 2007 to March 31, 2008.

The 2007–2008 budget remained relatively unchanged from previous years. However, the move to a new office space resulted in an increase in operational expenses. There was also a one-time increase in personnel expenses as a result of the departure of the previous Ombudsman.

Category	Expenditures
Personnel	$ 418,400
Office and Operations	$ 90,200
Supplies and Services	$ 6,500
Capital items	$ 3,000
Total	**$ 518,100**

Accolades

It isn't always easy to do the right thing. It isn't always convenient to go the extra mile. But it is always appreciated by people who receive an explanation, get answers to their questions or encounter someone who really listens to their concern and treats them fairly.

Such treatment can be unexpected. Often, dealing with government causes anxiety for citizens, who have the expectation that there will be "red tape" or that the experience will be difficult or disappointing.

There are many government employees who try to do their best every day in serving the Yukon public. We want to extend our thanks to some of the people who made a difference in 2007.

Renée Paquin

Manager, Recruitment and Staffing, Corporate Human Resources Services, Public Service Commission

for diligently responding to our enquiries and taking the time to ensure that a job applicant fully understood what had transpired with a competition.

Brent Slobodin

Assistant Deputy Minister, Advanced Education, Education

for looking at a situation with fresh eyes, which resulted in a fair resolution of a complaint.

Sherri Wright

Director, Insured Health and Hearing Services, Health and Social Services

for recognizing that a mistake had been made and making a commitment to rectify it.

Lyle Henderson

Director, Lands Branch
Energy, Mines and Resources

for embracing the concept of using a citizen's complaint as a means to improve government service. His use of an Ombudsman investigation as a staff training tool was innovative and inspired. ■